

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

IN RE: . Case No. 1-19-41628 (CEC)  
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.  
IBK PARTNERS INC., . 271-C Cadman Plaza East  
.  
.  
Debtor. . April 17, 2019  
. . . . . 4:03 p.m.

HEARING ON [3] NOTICE OF HEARING ON DEFICIENT CHAPTER 11 CASE  
FOR DEBTOR'S FAILURE TO BE REPRESENTED BY COUNSEL, [4] ORDER  
SCHEDULING INITIAL CASE MANAGEMENT CONFERENCE, [18] ORDER (1)  
SCHEDULING HEARING ON AN EXPEDITED BASIS TO RETAIN COUNSEL TO  
THE DEBTOR AND AUTHORIZE A POST-PETITION RETAINER AND (2)  
GRANTING EXTENSION OF TIME TO FILE SCHEDULES. (RELATED  
DOCUMENT(s), [16] APPLICATION TO EMPLOY, [17] MOTION TO EXTEND  
DEADLINE TO FILE SCHEDULES

BEFORE HONORABLE CARLA E. CRAIG  
UNITED STATES BANKRUPTCY COURT CHIEF JUDGE

APPEARANCES:

For the Debtor: Rosen & Kantrow, PLLC  
By: AVRUM J. ROSEN, ESQ.  
38 New Street  
Huntington, NY 11743

For the U.S. Trustee: Office of the U.S. Trustee  
By: NAZAR KHODOROVSKY, ESQ.  
U.S. Federal Office Building  
201 Varick Street, Suite 1006  
New York NY 10014

Audio Operator: Juliet Lecky

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APPEARANCES (Cont'd):

For 195 Saint James  
Lender, LLC:

Kriss & Feuerstein LLP  
By: DANIEL NEIL ZINMAN, ESQ  
360 Lexington Avenue, Suite 1200  
New York NY 10017

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1 COURT CLERK: Calling Matters 28 through 30 on the  
2 calendar, IBK Partners Inc., hearing on deficient Chapter 11  
3 case for debtor's failure to be represented by counsel, case  
4 management conference, and the hearing to retain counsel.

5 MR. KHODOROVSKY: Your Honor, Nazar Khodorovsky for  
6 the U.S. Trustee.

7 MR. ROSEN: Good afternoon, Avrum Rosen of Rosen &  
8 Kantrow, proposed counsel for the debtor.

9 MR. ZINMAN: Good afternoon, Your Honor. Thank you  
10 for taking things out of order. Daniel Zinman, Kriss &  
11 Feuerstein, for 195 Saint James Lender, LLC.

12 MR. KHODOROVSKY: Your Honor, Nazar Khodorovsky for  
13 the U.S. Trustee. Your Honor, the U.S.T. wanted to note that  
14 and respectfully request that the hearing for lack of counsel  
15 be marked off since the debtor has now retained counsel.

16 THE COURT: All right.

17 MR. KHODOROVSKY: Also, Your Honor, the U.S.T. has  
18 uploaded the proposed order regarding the retention of Mr.  
19 Rosen's firm. The U.S.T.'s Office uploaded the proposed order  
20 on the 16th, yesterday. So, I believe those two matters are  
21 resolved.

22 THE COURT: Okay. So, this case involves a property  
23 that was transferred, was it not?

24 MR. ROSEN: Yes, Your Honor.

25 THE COURT: From -- and it was transferred from a

1 debtor that was in a bankruptcy before Judge Grossman, correct?

2 MR. ROSEN: Yes, Your Honor.

3 THE COURT: Owned by the same person, the same -- in  
4 other words the same -- the principal of the transferor?

5 MR. ROSEN: The principals are not quite the same,  
6 but they're related and they're affiliated.

7 THE COURT: Okay. Why is this not going immediately  
8 back to Judge Grossman?

9 MR. ROSEN: Your Honor, you know, the only thing I  
10 could do under the circumstances here was -- I obviously was  
11 not involved in the beginning of it because that's probably the  
12 way I would have gone.

13 THE COURT: But it's a related case, isn't it?

14 MR. ROSEN: It is a related case, Your Honor. It's  
15 here, so I dealt with it here. I have an order. I have --

16 THE COURT: Okay.

17 MR. ROSEN: -- cured the deficiencies, and, you know  
18 --

19 THE COURT: My --

20 MR. ROSEN: -- I think you know that my predilection  
21 is to lay it all out what I want to do and where it's going. I  
22 explained to the clients that one of several things could  
23 happen and that one of them might be that you would turn around  
24 and say --

25 THE COURT: I didn't -- I actually stopped reading

1 when I stopped at -- when I saw that it was --

2 MR. ROSEN: Oh, I work so hard on this, Your Honor.

3 THE COURT: -- it used to be from Judge Grossman.

4 MR. ROSEN: I spent a weekend on these papers.

5 THE COURT: I said, well, that solves -- that's as  
6 far as I need to read, but --

7 MR. ROSEN: I mean I tried to lay -- I laid out the  
8 entire scenario of what we were going to do in the case and  
9 what was going on and what was intended.

10 You know, the only thing I can say to you is, Your  
11 Honor, you know, when it was front of Judge Grossman, there  
12 were -- and I'm not criticizing at all, if you read -- if you  
13 read his decision on the lift stay, it was like a how to on how  
14 not to conduct a trial on behalf of who was representing these  
15 people.

16 THE COURT: But -- okay.

17 MR. ROSEN: But if it's --

18 THE COURT: It seems to me since he -- especially  
19 since he went so far as to write a decision on this, that it is  
20 appropriate for him to be the person who -- and we have the  
21 same property, same lender, you know, so --

22 MR. ROSEN: But different -- but, Your Honor, but a  
23 very different set of circumstances, and let me just explain it  
24 just so you have the whole picture, all right, even though you  
25 have my wonderful pleadings, you have the whole picture.

1           What happened here was -- what happened here was the  
2 fact that after that case there was a determination as to  
3 value. It's an interesting situation because there was a  
4 valuation hearing that was just a disaster, no -- nothing got  
5 into evidence, nothing got dealt with. It was determined that  
6 -- it was determined that there was insufficient equity in the  
7 property, and there were fights over it.

8           After that, lift stay is granted, the parties enter  
9 into new agreements, wait for the case to get dismissed, enter  
10 into an agreement that -- to allow them to get the payoffs.  
11 They go out and get the mortgagees. They go out and get --  
12 because this is one mortgage spread over two properties. They  
13 couldn't get that kind of mortgage anymore. They had to get  
14 two separate mortgages.

15           So, there's an agreement for them to come up with I  
16 think \$4.3 million by March 15th. They come up with the money.  
17 They've got the commitments. They're at the closing. The  
18 problem is that one of the mortgages on the bigger parcel is  
19 also taking the second on the other one.

20           What's so interesting about it is even though you had  
21 a valuation hearing saying that these properties weren't worth  
22 the 4.3 or 4.4 million dollars that they had to do, they were  
23 able to go out and get the financing to pull out that much  
24 money. So, the market obviously determined that the properties  
25 were worth far more.

1           And then what happened was the lender, who I think  
2 entered into this agreement because they got releases, they got  
3 all kinds of things, entered into this new agreement, all  
4 right, never thinking they were going to close. And when it  
5 came time to close, they refused to show up at the closing and  
6 give the payoffs and give the lenders.

7           They came up with the reason that they were going to  
8 have to release -- they were both closing on the same day, and  
9 they wanted to do simultaneous closings with two different  
10 banks, which is pretty much impossible, so they were doing one  
11 in the morning and one in the afternoon.

12           They went to the one in the morning. While they were  
13 at the table for the one in the morning where they knew the  
14 property was only worth between 1.4 and 1.6, they said, we're  
15 not coming unless you give us \$2.5 million out of the first  
16 closing. They actually closed the first loan and were sitting  
17 there waiting for them to show up with the payoff. I've  
18 attached the HUD. Everything was done, the checks were  
19 written.

20           And so, our allegation here and, again, not for  
21 today, but our allegation is here there was a new agreement  
22 after that case which was then breached by the lender. So this  
23 case is really not your typical kind of like new debtor  
24 syndrome case because we've got a new agreement, we've got a  
25 new breach.

1           So, my plan was to commence an adversary proceeding  
2 to move for specific performance and damages because they cost  
3 a lot of money cancelling those closings, to file a plan to  
4 deal with their lien priority issues so that they don't have  
5 that problem and to move -- and to close the two loans. We've  
6 still got the mortgage commitments on the two loans. They're  
7 still ready to close.

8           So, the issue is this is a case that could be done in  
9 short order, save -- these people have their lungs in this  
10 property. They've been working on it for 20 years. They got  
11 in with hard money lenders, and they've gone through -- if you  
12 read the history, it's a nightmare.

13           So I laid it all out before this Court, thinking we  
14 could come in I think officially and quickly try and get a  
15 resolution to this, get the lender paid the full amount that  
16 they agreed -- they had agreed to take in the first instant,  
17 protect whatever concerns they had and move the case forward.

18           You know, if it's going to get -- you're the chief  
19 judge, if you want to send it back --

20           THE COURT: I think it --

21           MR. ROSEN: -- it goes back.

22           THE COURT: -- it's a --

23           MR. ROSEN: I just wanted you to understand why --

24           THE COURT: I think it's a --

25           MR. ROSEN: -- what happened, why we did it.



1 THE COURT: -- a related case. This is the -- since  
2 there is -- there is -- what's the -- what was the ownership of  
3 the prior -- of the entity, the prior entity?

4 MR. ROSEN: Two individuals and now the ownership is  
5 one of the individual's wives.

6 THE COURT: I think that's close enough to a related  
7 case for my -- it's -- obviously it's the same --

8 MR. ROSEN: The same property.

9 MR. ZINMAN: Your Honor, there's --

10 THE COURT: The same property. Same property and  
11 same peoples whose interests are involved.

12 MR. ROSEN: Your Honor, if I had filed these cases in  
13 the beginning, first of all, I would have never filed without  
14 coming to a reason, I would have never filed the first case in  
15 CI on a Brooklyn property. I just wouldn't have done it. All  
16 right. One of the people lived in Freeport, so the debtor  
17 thought he had -- the debtor's attorney thought he had to file  
18 it there. And, secondly, obviously I would have filed it as a  
19 related case, if it happened, you know. But with that, all of  
20 that said, I just wanted to make sure the Court understood  
21 exactly what was going on here, that it wasn't a bad faith  
22 filing and to make the pitch to try to keep it here so we can  
23 get it done quickly.

24 THE COURT: All right. So, what I will do is, I'm  
25 going to give you another conference date which will be a

1 holding date, and I believe that in the interim I will probably  
2 issue an order transferring it to Judge Grossman.

3 MR. ROSEN: Okay.

4 THE COURT: Yes. Assuming he's --

5 MR. ROSEN: Mr. Kantrow won this bet.

6 THE COURT: Assuming that he's -- assuming he's  
7 willing to take it. So, yes.

8 MR. ZINMAN: If I may be heard, Your Honor.

9 THE COURT: Yes.

10 MR. ROSEN: Thank you, Your Honor.

11 MR. ZINMAN: Once again, for the record, Daniel  
12 Zinman from Kriss & Feuerstein for 195 Saint James Lender, LLC.  
13 In terms of the potential transfer, we certainly have no  
14 objection. I had no objection being in front of Your Honor for  
15 personal reasons. I live in New Jersey and Central Islip was a  
16 little far, but, you know, I'm -- but -- and I have every  
17 confidence in Your Honor, but if Your Honor -- if it's related,  
18 we're certainly happy to see it transferred back to Judge  
19 Grossman.

20 In terms of what counsel just related, I can't help  
21 but feel an incredible feeling of deja vu because these exact  
22 same arguments were made by McWolle Development, the debtor's  
23 predecessor, in the foreclosure court, which is the proper  
24 court in which it should be made.

25 THE COURT: Foreclosure post dismissal of the prior

1 bankruptcy.

2 MR. ZINMAN: Correct, Your Honor. And what happened  
3 was my client wasn't --

4 THE COURT: And these arguments were unavailing --

5 MR. ZINMAN: No.

6 THE COURT: -- it sounds like.

7 MR. ZINMAN: They didn't bother to show up, Your  
8 Honor. Instead they decided to transfer it to a new entity and  
9 have that entity file for bankruptcy.

10 THE COURT: But -- okay. So how were these -- when  
11 were the arguments made?

12 MR. ZINMAN: The arguments were made -- let me try  
13 and trace this. After the bankruptcy was -- after the stay was  
14 lifted, my client determined that they'd rather get a reduced  
15 payoff than actually own the properties, so they entered an  
16 agreement and they gave the debtor a period of time in which to  
17 come up with \$4.3 million to pay them off.

18 At some point along the way the debtor -- the  
19 debtor's motion to dismiss the case was granted. I expressed  
20 concern to Judge Grossman at the time saying if Your Honor  
21 dismisses the case, they'll just refile. So he added to the  
22 dismissal order a provision that McWolle could not file for  
23 bankruptcy again for 180 days.

24 The day after that order was entered, state court  
25 counsel for McWolle filed a letter with the state court saying

1 that the stipulation that we had entered into for the reduced  
2 payoff violated the automatic stay in McWolle's bankruptcy  
3 case, notwithstanding the fact that we had a lift stay order  
4 and the fact that the case had been dismissed a day earlier.

5 Be that as it may, we decided that -- they asked for  
6 more time and my client -- McWolle did, and we said, sure,  
7 okay, take some more time. And to clear up any lingering doubt  
8 about the lift stay, we had to reaffirm after the dismissal,  
9 bank -- McWolle reaffirmed its obligations.

10 Among the obligations in the reduce payoff agreement  
11 was not to transfer the property, in addition not to file any  
12 motion seeking a stay of the -- of this foreclosure sale, and  
13 they gave -- we gave them until March 15th to come up with the  
14 money and the foreclosure sale was scheduled for March 21st.

15 There's nothing in the agreement that requires us to  
16 subdivide the 4.3 million by property. It simply says if you  
17 pass 4.3 million, that we'll consider that complete  
18 satisfaction and issue release of the mortgages. The debtor  
19 could not come up with that.

20 They asked for if we paid you 1.2 million on one  
21 property and then closed the next day on the other, then would  
22 that work, and we said, no, because we have two properties and  
23 we didn't want to take that kind of risk and that wasn't the  
24 agreement. The agreement contained a no waiver clause. It  
25 contained an --

1 THE COURT: All right.

2 MR. ZINMAN: -- integration clause, all the usual  
3 things you'd expect to see. So March 15th comes and goes.  
4 They can't seem to close on both properties. And so instead  
5 they filed -- it was a Friday, I think it was the 20 --

6 THE COURT: Okay. This --

7 MR. ZINMAN: -- the 19th or 18th, they filed the  
8 motion, their emergency motion. It was scheduled for hearing  
9 the day before the foreclosure sale, March 20th. Tuesday night  
10 we file a response. Wednesday, the day of the hearing comes,  
11 they don't show up. Instead, they form this new entity,  
12 transfer the property into that entity, despite their agreement  
13 not to do so.

14 THE COURT: Yes, I think this is probably enough for  
15 me --

16 MR. ZINMAN: All right.

17 THE COURT: -- to hear right now, but I appreciate --

18 MR. ROSEN: Your Honor, I'm happy to save us travel  
19 time --

20 THE COURT: -- that everybody has strong feelings  
21 here.

22 MR. ROSEN: -- save travel time if he wants to keep  
23 it in Brooklyn.

24 THE COURT: I'll speak with Judge Grossman and --

25 MR. ROSEN: All right. Your Honor, and just to

1 correct --

2 THE COURT: -- the two of us will decide what to do  
3 --

4 MR. ROSEN: -- two short things.

5 THE COURT: -- but I need to give you another date,  
6 and you don't need to correct the record.

7 MR. ROSEN: Okay.

8 THE COURT: I don't need to hear any record  
9 corrections right now. Okay. So let's get the -- get a date  
10 for you. It's going to be a June date, so that will give you  
11 ample time to file any motion that you need to file, but within  
12 the next week or so you'll either see an order transferring it  
13 or not. Okay. So --

14 MR. ROSEN: Got it.

15 THE COURT: -- June, give me a June date.

16 COURT CLERK: The 19th.

17 THE COURT: June 19th. At what time, please?

18 COURT CLERK: 2:30.

19 THE COURT: At 2:30.

20 MR. KHODOROVSKY: June 19th at 2:30, Your Honor?

21 THE COURT: Yes.

22 MR. KHODOROVSKY: And can Your Honor mark off the  
23 hearing regarding lack of counsel?

24 THE COURT: Will do. Thank you.

25 MR. KHODOROVSKY: And retention.

1 MR. ROSEN: I apologize. I didn't get the time.

2 MR. KHODOROVSKY: 2:30.

3 COURT CLERK: 2:30.

4 THE COURT: 2:30 p.m.

5 MR. KHODOROVSKY: Okay.

6 MR. ROSEN: All right.

7 THE COURT: And I'll -- we'll sign it. I can sign  
8 this. That's fine.

9 MR. ROSEN: Your Honor --

10 THE COURT: Was there a post-petition retainer? I  
11 guess the U.S. Trustee signed off on that?

12 MR. KHODOROVSKY: Your Honor, there was indeed a  
13 post-petition retainer, but it came from --

14 MR. ROSEN: No, there's an order for a post-petition  
15 retainer.

16 THE COURT: It came from a third party?

17 MR. KHODOROVSKY: Yes, Your Honor, and the U.S.  
18 Trustee has reviewed the appropriate defense affidavits --

19 THE COURT: Fine. I'm going to --

20 MR. KHODOROVSKY: -- and there were supplement Lar  
21 Dan affidavits.

22 THE COURT: I'm going to sign your retention order.

23 MR. ROSEN: Thank you, Your Honor.

24 MR. KHODOROVSKY: Thank you, Your Honor.

25 THE COURT: Okay. Thank you.

1 MR. ZINMAN: Your Honor, I wanted to point out that  
2 this hearing is likely to be an evidentiary hearing, and I  
3 don't know how that fits in with your calendar, assuming Your  
4 Honor were to hear the matter on your calendar.

5 THE COURT: Mostly these things are not -- are  
6 handled by the initial hearing. It's not an evidentiary  
7 hearing, and then we set it down. I make my own -- we explore  
8 what exactly the issues are that need to be tried and set it  
9 down for a hearing on another day.

10 MR. ZINMAN: Thank you, Your Honor.

11 MR. ROSEN: Thank you, Your Honor.

12 MR. KHODOROVSKY: Thank you, Your Honor.

13 \* \* \* \* \*

14 **C E R T I F I C A T I O N**

15 I, COLETTE MEHESKI, court approved transcriber,  
16 certify that the foregoing is a correct transcript from the  
17 official electronic sound recording of the proceedings in the  
18 above-entitled matter, and to the best of my ability.

19

20 /s/ Colette Meheski

21 COLETTE MEHESKI

22 J&J COURT TRANSCRIBERS, INC. DATE: May 3, 2019

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